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COMMERCIAL TENANCIES:

SECTION 17 OF *THE LANDLORD AND TENANT ACT*

AND

SECTION 93 OF *THE REAL PROPERTY ACT*

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CHAPTER 1

INTRODUCTION

A. BACKGROUND

The Manitoba Law Reform Commission has become aware of certain inconsistencies in Manitoba's statute book concerning a landlord's remedy of re-entry. This report will make recommendations to address these inconsistencies with a view to clarifying the law and improving its accessibility.

Re-entry is a remedy available to landlords in circumstances where the tenant has committed a serious breach of a commercial tenancy agreement. It involves re-taking possession of the premises and thereby terminating the tenancy agreement.

The common law provides a right of re-entry in only very narrow circumstances, and most commercial leases now allow for much broader powers of re-entry in the terms of the lease agreement. Statute law has also expanded on the common law in this regard, through the use of statutory implied terms. These provisions help to fill in gaps in lease agreements by implying certain terms into every lease unless the lease agreement provides otherwise.

At issue in this report are the statutory implied terms allowing a landlord to:

- inspect leased premises and give notice requiring a tenant to effect repairs; and
- re-enter leased premises in cases of non-payment of rent, breach of covenant, or failure to effect repairs in accordance with the landlord's notice.

In Manitoba, the statutory implied term permitting a landlord to inspect leased premises and give notice requiring a tenant to effect repairs is found in section 93(a) of *The Real Property Act*.[1]

The implied terms permitting a landlord to re-enter leased premises and terminate a tenancy are found in both *The Landlord and Tenant Act*[2] and *The Real Property Act*.

Section 17 (1) of *The Landlord and Tenant Act* provides that a landlord may re-enter leased premises if 15 or more days have elapsed since non-payment of rent.

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[1] RSM 1988, c R30, CCSM c R30.
[2] RSM 1987, c L70, CCSM c L70.

Section 93 (b) of *The Real Property Act* provides that a landlord may re-enter a leased premises if:

- two calendar months have elapsed since non-payment of rent;
- the tenant breaches a covenant for a period of two calendar months; or
- the tenant fails to effect repairs within the time frame set out in the landlord's notice given under section 93(a).

A comparison of sections 17 of *The Landlord and Tenant Act* and section 93 of *The Real Property Act* reveals some important differences, particularly in respect of the time that must elapse before re-entry can occur. These inconsistencies in the statute law affect its clarity and ought to be corrected.

The report will also touch on an item of statutory organization, recommending the re-location within the statute book of the implied term that requires a lessee to pay rent and keep the leased premises in good repair.

B. ACKNOWLEDGMENTS

The Commission thanks Wayne Leslie for his comments on an early draft of this report.

CHAPTER 2

THE SCOPE OF THE REPORT

The law of commercial tenancies is notoriously complicated. In a series of reports in the 1990s, the Manitoba Law Reform Commission described the antiquity, inaccessibility and inconsistencies of the law in this area.[1] A combination of technical and archaic language and the piecemeal introduction of statutory provisions over the course of centuries in both England and Canada have contributed to the law's complexity.

It is not surprising that the law of commercial tenancies has been the subject of several law reform initiatives in Canada and elsewhere. In addition to the Commission's four reports on this subject, the British Columbia Law Reform Commission published its *Report on the Commercial Tenancy Act* in 1989,[2] and the Ontario Law Reform Commission issued a report on landlord and tenant law in 1976.[3]

More recently, the British Columbia Law Institute published a comprehensive report making recommendations for the reform of commercial tenancies law.[4] The Law Commission of England and Wales has studied the subject of commercial tenancies over many years, its most recent report on the topic having been published in 2006.[5] The Law Commissions of Ireland and New Zealand have also made comprehensive recommendations for change in commercial tenancies law in the last decade.[6]

The Commission is indebted to these institutions for providing extensive background and insight into the many difficult issues within the law of commercial tenancies.

While the need for comprehensive reform in this area remains pressing, this report will focus on the discrete issue of the implied terms for re-entry. The Commission is aware that the Uniform Law Conference of Canada is drafting a *Uniform Commercial Tenancies Act*, many provisions of which may be suitable for enactment in Manitoba. It therefore seems premature to launch into a broad examination of commercial tenancies law from a strictly Manitoba perspective.

On the other hand, the inconsistencies in the statute book concerning a landlord's power to

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[1] See Manitoba Law Reform Commission, *Distress for Rent in Commercial Tenancies* (Report No 81, 1994); Manitoba Law Reform Commission, *Covenants in Commercial Tenancies* (Report No 86, 1995); Manitoba Law Reform Commission, *Fundamental Breach and Frustration in Commercial Tenancies* (Report No 92, 1996); Manitoba Law Reform Commission, *Commercial Tenancies: Miscellaneous Issues* (Report No 95, 1996).

[2] Law Reform Commission of British Columbia, *Report on the Commercial Tenancy Act* (LRC 108, 1989).

[3] Ontario Law Reform Commission, *Report on Landlord and Tenant Law* (1976).

[4] British Columbia Law Institute, *Report on Proposals for a New Commercial Tenancy Act* (BCLI Report No 55, 2009).

[5] Law Commission, *Termination of Tenancies for Tenant Default* (LC No 303, 2006).

[6] Law Reform Commission of Ireland, *Report on the Law of Landlord and Tenant* (LRC 85, 2007); New Zealand Law Commission, *Report on a New Property Law Act* (NZLC Re 29, 2004).

re-enter are unique to Manitoba, and affect the accessibility and certainty of the law. This report is concerned solely with clarifying the statutory implied terms of inspection and re-entry.

To place its recommendations in context, the Commission will first describe the concept of re-entry and provide a brief history of the statutory provisions in question.

CHAPTER 3

RE-ENTRY

Re-entry is a landlord's remedy available in circumstances where the tenant has committed a serious breach of the tenancy agreement. It consists of the landlord re-taking possession of the leased premises and thereby terminating the tenancy. It is a self-help remedy, meaning the landlord can terminate the tenancy without judicial authorization. As such, it is rarely used and generally not favoured by the judiciary.[1]

To better understand the remedy of re-entry it is necessary to distinguish between a condition and a covenant in a tenancy agreement. Both conditions and covenants are promises by the landlord or tenant in respect of the tenancy agreement. A tenant's promise to pay rent is an example of a covenant or condition. In a written tenancy agreement, conditions are typically identified with the words "on condition that" or "providing always that".

At common law, the principal difference between covenants and conditions relates to the consequence of a breach. If a condition is breached, a landlord or tenant may terminate the agreement. If a covenant is breached, the wronged party may seek damages but cannot ordinarily seek to terminate the tenancy on that basis.[2] Aside from providing different remedies in cases of breach, the common law generally treats covenants and conditions in the same manner.[3]

The common law provides that a landlord may only exercise its right of re-entry if the tenant has breached a condition of the tenancy agreement. A landlord may not lawfully re-enter and terminate a tenancy in the event of a breach of covenant or in cases of non-payment of rent, unless such a right is provided in the lease agreement or by statute.[4]

It is now commonplace to draft provisions in standard commercial leases allowing re-entry in cases of breach of covenant, or non-payment of rent. Provisions in the lease allowing re-entry will usually displace any common law or statute law rules that might otherwise apply. In most Canadian jurisdictions, statute law also provides for the power to re-enter leased premises in cases of non-payment of rent or breach of covenant, as will be discussed in the following chapter.

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[1] Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Thomson Reuters, 2010) at 307.
[2] C. Bentley, J. McNair, M. Butkus, *Williams and Rhodes Canadian Law of Landlord and Tenant*, 6th ed (Toronto: Thomson Reuters, 1988) vol 1 at 12-40.4.
[3] Manitoba Law Reform Commission, *Covenants in Commercial Tenancies* (Report No 86, 1995) at 2.
[4] Bentley, *supra* note 2.

CHAPTER 4

THE STATUTORY FRAMEWORK AND HISTORY

A. IMPLIED TERMS

The mutual obligations and rights of a commercial landlord and tenant are typically set out in a written lease agreement.

If a lease agreement is silent on certain important issues, the law will operate to fill the gap. Thus, the common law implies two terms in every commercial lease agreement: a covenant for quiet enjoyment by the landlord and a covenant by the tenant to use the premises in a tenant-like manner.[1] A term implied by the common law will give way to an express term of the lease touching on the same subject.

Legislation in most Canadian common-law provinces expands on the idea of implied terms, and includes a list of covenants to be implied in every commercial lease unless a contrary intention appears in the lease. These statutory implied terms typically include a landlord's right to inspect the leased premises and give notice to a tenant requiring repairs, and to re-enter the leased premises on a tenant's non-payment of rent, breach of covenant or failure to effect repairs.

In Manitoba, statutory implied terms are found in both *The Landlord and Tenant Act*[2] and *The Real Property Act*.[3]

B. SECTION 17 OF *THE LANDLORD AND TENANT ACT*

Section 17 of *The Landlord and Tenant Act* provides as follows:

> 17(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed or provided by statute, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, remains unpaid for 15 days after any of the days on which it ought to have been paid, although no formal demand thereof has been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate.
>
> 17(2) In every such demise as aforesaid, if the tenant or any other person is convicted of keeping a disorderly house within the meaning of the Criminal

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[1] Bruce Ziff, *Principles of Property Law*, 5th ed (Toronto: Thomson Reuters, 2010) at 302, 304.
[2] RSM 1987, c L70, CCSM c L70.
[3] RSM 1988, c R30, CCSM c R30.

> Code (Canada), on the demised premises, or any part thereof, the landlord may at any time thereafter, into the demised premises, or any part thereof, re-enter and the same have again, repossess and enjoy as of his former estate.

This section first appeared in *The Landlord and Tenant Act* in 1931.[4] Aside from some minor amendments to the language, the section has remained unchanged since then. The marginal note in the 1931 enactment suggests that the section was borrowed from Ontario's 1927 landlord and tenant legislation.[5]

There has been very little judicial consideration of section 17 of *The Landlord and Tenant Act*.[6] The paucity of case-law likely reflects the practical reality of modern commercial leasing. As most commercial leases provide specifically for rights of re-entry, recourse to the implied term in the statute is unnecessary.

C. SECTION 93 OF *THE REAL PROPERTY ACT*

Section 93 of *The Real Property Act* provides as follows:

> 93 In the memorandum of lease, unless a contrary intention appears therein, there shall also be implied the following powers in the lessor, that is to say,
>
> (a) that he may, by himself or his agents, enter upon the demised property and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode or upon the demised property, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair it;
>
> (b) that in case the rent or any part thereof is in arrear, or in case default is made in the fulfilment of any covenant, whether expressed or implied in the lease, on the part of the lessee, and the default is continued for the space of two calendar months, or in case the repairs required by the notice have not been completed within the time therein specified, the lessor may enter upon and take possession of the demised property.

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[4] SM 1931, c 29.

[5] RSO 1927, c 190, s 17.

[6] The Commission is aware of only two reported cases that consider section 17 of *The Landlord and Tenant Act*. In *Winfield Developments v. J.E.R. Associates* (1985), 36 Man R (2d) (Man QB), Kroft J. found that the landlord's re-entry was lawful in accordance with the terms of the lease and section 17(1) of *The Landlord and Tenant Act*. Hewak J. made the identical finding in *Alaskanti Ltd. v. Sherwood* (1982), 17 Man R (2d) 278 (Man QB).

This section originally appeared in Manitoba's first *Real Property Act* in 1885.[7] The original section provided for a right of re-entry if rent was in arrears for a period of two calendar months, or if a covenant had been breached continuously for a period of six calendar months.[8]

The time that must elapse before re-entry can occur for breach of covenant was reduced from six months to two months in 1900,[9] but otherwise the section has remained largely unchanged since its original enactment.

Section 93 of *The Real Property Act* has not been the subject of any reported judicial decisions in Manitoba.

D. *THE SHORT FORMS ACT*

The concept of re-entry also appears in most Canadian common-law statutes regarding short forms of leases. Manitoba's *Short Forms Act* [10] is representative of this type of legislation which allows a short phrase in a lease agreement to stand for, or have the extended meaning of, a longer paragraph, provided the lease is captioned "Pursuant to the *Short Forms Act*". Schedule 3 of *The Short Forms Act*, for example, provides that the phrase "Proviso for re-entry by the said (lessor) on non-payment of rent or non-performance of covenants" in a lease has the following extended meaning:

> Provided always and it is hereby expressly agreed that, if the rent hereby reserved, or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, his executors, administrators or assigns, then, and in either of such cases, it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess and enjoy as if his or their former estate, anything hereinafter contained to the contrary notwithstanding.

The proviso for re-entry in *The Short Forms Act* is unchanged since it first appeared in Manitoba's statute book in *The Short Forms of Indentures Act* of 1880.[11]

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[7] *The Real Property Act of 1885*, SM 1885, c 28.
[8] *Ibid*, s 17(2).
[9] *The Real Property Act*, RSM c 133, s 95(b).
[10] RSM 1987, c S120, CCSM c S120.
[11] *The Short Forms of Indentures Act*, CSM 1880, c 61.

CHAPTER 5

THE NEED FOR REFORM AND MODELS FOR REFORM

A. THE NEED FOR REFORM

A comparison of section 17 of *The Landlord and Tenant Act* and section 93 of *The Real Property Act* reveals the following differences:

- Section 17 of *The Landlord and Tenant Act* does not provide an implied term permitting a landlord to inspect the leased premises, give notice to the tenant requiring repairs, or re-enter the premises if the tenant fails to effect such repairs. These powers are found only in section 93 of *The Real Property Act*.

- Section 17 addresses only the right of re-entry in cases of non-payment of rent, and is silent on the right of re-entry in cases of breach of covenant. Section 93 of *The Real Property Act* provides a right of re-entry in cases of non-payment of rent, and breach of covenant.

- Section 17 of *The Landlord and Tenant Act* provides for a right of re-entry regardless of whether a demand for rent has been made. This is consistent with the language of the proviso for re-entry in *The Short Forms Act*. Section 93 of *The Real Property Act* is silent on the need for a demand before re-entry.

- Section 17 refers to a right of re-entry if rent has been unpaid for a period of 15 days. This is consistent with the language of *The Short Forms Act*. By contrast, section 93 of *The Real Property Act* provides for re-entry only if rent has remained unpaid, or a covenant breached continuously, for a period of two calendar months.

Although these statutory provisions do not seem to cause great difficulty in practice, it is important to reconcile the differences between them. Duplication of statutory provisions impedes the clarity and accessibility of the law. The confusion is compounded by variations between the two provisions, particularly in respect of the waiting periods before re-entry can occur. The Commission is not aware of any policy justification to account for these differences.[1]

The statutory implied terms only apply in circumstances where the lease agreement is silent on the question of re-entry. This is most likely to occur in cases where the lease has not

[1] Hansard is not available for the years in which these provisions were originally enacted, but it seems reasonable to conclude that there was not a conscious decision made to provide for different time periods in the two statutes.

been professionally prepared, and it is therefore all the more important that the statutory implied terms be as straightforward as possible.

B. MODELS FOR REFORM

Statutory implied terms permitting re-entry appear in the statutes of four other Canadian common-law provinces and three territories. These statutes offer a variety of models for reform.

In Alberta, Saskatchewan, Yukon, the Northwest Territories and Nunavut, legislation provides an implied term allowing a landlord to inspect the leased premises, give notice to a tenant requiring repairs, and re-enter the leased premises if the tenant fails to effect the repairs in the required time.[2]

In Alberta, Saskatchewan, Yukon, Northwest Territories and Nunavut, there are statutory implied terms allowing a landlord to re-enter on non-payment of rent or breach of covenant, after a period of two months.[3]

In Ontario and Prince Edward Island, legislation implies a term in every lease agreement that the landlord may re-enter on non-payment of rent after a period of 15 days. The Ontario and Prince Edward Island statutes are silent on the right to re-enter on breach of covenant.[4]

In all jurisdictions but Saskatchewan and Manitoba, the implied terms allowing for inspection and re-entry appear in only one statute.

As in the case of Manitoba, most Canadian statutes imply a term in every commercial lease agreement allowing re-entry if the leased premises are used as a disorderly house within the meaning of the *Criminal Code* of Canada.[5]

In its *Report on Proposals for a New Commercial Tenancy Act*,[6] the British Columbia Law Institute recently considered the need for an implied term in British Columbia's legislation allowing re-entry. The Institute recommended that re-entry be permitted on five days' notice for non-payment of rent, and 10 days' notice for breach of covenant. This is a marked departure from the existing statutory provisions in other Canadian provinces which do not require notice and prescribe either a 15-day or two-month waiting period.

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[2] *Land Titles Act*, RSA 2000, c L4, s 97; *Land Titles Act, 2000*, SS 2000, c L5.1, s 146; *Landlord and Tenant Act*, RSY 2002, c 131, s 8; *Commercial Tenancies Act*, RSNWT 1988, c C-10, s 8.

[3] *Ibid.*

[4] *Commercial Tenancies Act*, RSO 1990, c L7, s 18; *Landlord and Tenant Act*, RSPEI 1988, c L4, s 9.

[5] See *The Landlord and Tenant Act*, RSM 1987, c L70, CCSM c L70, s 17(2).

[6] British Columbia Law Institute, *Report on Proposals for a New Commercial Tenancy Act* (BCLI Report No 55, 2009).

CHAPTER 6

RECOMMENDATIONS FOR REFORM

Although the need for comprehensive reform of commercial tenancies law remains pressing, this report has a more narrow purpose. The Commission proposes merely to reconcile the provisions in Manitoba's statute book concerning the implied terms of re-entry, and to make the statute more user-friendly in its organization.

A. REPEAL OF SECTION 93 OF *THE REAL PROPERTY ACT*

To avoid duplication and improve clarity, the Commission recommends that an implied term permitting re-entry be located in only one statute.

The Landlord and Tenant Act is the principal source of statutory rules governing the commercial landlord and tenant relationship. It is the place a person would most likely look to find rules concerning commercial tenancies. It provides for several other implied terms including the non-derogation of grant, restrictions on the right to distrain, and a landlord's obligation not to withhold consent to assignment unreasonably. In the majority of Canadian jurisdictions, implied terms appear in the equivalent of Manitoba's *Landlord and Tenant Act*.

The Real Property Act has a different focus. Its object is to "simplify the title to land, to give certainty thereto, to facilitate the proof thereof and to expedite dealing therewith".[1] It is generally concerned with the registration of titles and other instruments, of which commercial leases represent only a small portion.[2]

Overall, the Commission believes that the implied term allowing a landlord to inspect and in some circumstances re-enter leased property is most appropriately located in *The Landlord and Tenant Act*, along with the majority of other statutory implied terms. The statutory provisions allowing a tenant to apply for relief from forefeiture after re-entry are also located in *The Landlord and Tenant Act*.[3] The implied term allowing for re-entry should logically be found in the same statute.

A choice must also be made between a 15-day waiting period and a two-month waiting period. The Commission is convinced that 15 days is the more appropriate time-frame. A waiting period of two months seems too long in this era of instant communication, and indeed may be the product of a time when most commercial leases were agricultural. The 15-day waiting period is also

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[1] *The Real Property Act*, RSM 1988, c R30, CCSM c R30, s 3.

[2] Section 94 of *The Real Property Act*, for example, provides that a note may be entered on the register if a landlord lawfully re-enters and re-takes possession of leased premises.

[3] *The Landlord and Tenant Act*, RSM 1987, c L70, CCSM c L70, s 19.

consistent with the proviso for re-entry found in *The Short Forms Act*.

The repeal of section 93 of *The Real Property Act* will help to clarify the law by eliminating duplication and confirming a waiting period of 15 days before re-entry can occur.

RECOMMENDATION 1

Section 93 of* The Real Property Act *should be repealed.

B. REPEAL OF SECTION 92 OF *THE REAL PROPERTY ACT*

In the interests of clarity and convenience, the Commission suggests that section 92 of *The Real Property Act* would more properly be situated within *The Landlord and Tenant Act*. Section 92 of *The Real Property Act* is an implied term requiring a lessee to pay rent and keep the leased property in good repair. With the repeal of section 93, as recommended in this report, section 92 would be the only remaining implied term in *The Real Property Act*. It is sensible that all implied terms be located in one statute. The Commission therefore recommends that Section 92 of *The Real Property Act* be repealed and the equivalent provision be situated in *The Landlord and Tenant Act* under a new section 17.1.

RECOMMENDATION 2

Section 92 of* The Real Property Act *should be repealed.

RECOMMENDATION 3

Section 17.1 should be added to* The Landlord and Tenant Act *to provide as follows:

17.1 The following covenants are implied in every lease, unless a contrary intention appears in the lease:

(a) That the lessee will pay the rent thereby reserved at the times mentioned in the lease; and
(b) That the lessee will at all times during the continuance of the lease keep, and at the termination thereof yield up, the land comprised in the lease in good and tenantable repair, accidents and damage to the buildings from fire, lightning, storm, and tempest, and reasonable wear and tear, excepted.

C. AMENDMENT OF SECTION 17 OF *THE LANDLORD AND TENANT ACT*

The Landlord and Tenant Act should be amended to include implied terms allowing a landlord to inspect leased premises, give notice to the tenant requiring repairs, and re-enter the leased premises in cases of breach of covenant or failure to effect repairs. These implied terms are currently found only in section 93 of *The Real Property Act*, and would otherwise be lost with that section's repeal.

Section 146 of Saskatchewan's *Land Titles Act* provides a relatively plain language version of an implied term for inspection and re-entry, and the Commission suggests that an amendment to section 17 of *The Landlord and Tenant Act* be modeled on that provision.

RECOMMENDATION 4

Section 17 of* The Landlord and Tenant Act *should be amended to provide as follows:

17. The following powers of the lessor are implied in every lease, unless a contrary intention appears in the lease:

(a) that the lessor or the lessor's agent may:
(i) enter on the leased land and view the state of repair; and
(ii) serve on the lessee, or leave at the lessee's last or usual place of residence or on the leased land, a notice in writing of any defect, requiring the lessee, within a reasonable period specified in the notice, to repair the defect to the extent that the lessee is bound to do so;

(b) that the lessor may enter on and repossess and enjoy the leased land as of the lessor's former estate where:
(i) the rent reserved, or any part of the rent reserved, is in arrears for the space of 15 days, although no formal demand for the rent has been made;
(ii) the lessee defaults in the performance of any covenant, whether express or implied, and the default continues for 15 days;
(iii) the repairs required by the notice mentioned in subclause (a)(ii) are not completed within the period specified in the notice; or
(iv) the lessee or any other person is convicted of keeping a disorderly house, within the meaning of the Criminal Code (Canada), on the leased land or any part of the leased land.

In respect of other possible amendments to section 17 of *The Landlord and Tenant Act*, the Commission notes the British Columbia Law Institute's novel recommendation that a landlord be required to give notice before re-entering. A related question is whether the statute should require notice before a landlord can enter leased premises to inspect the state of repair.

While the Commission recognizes the importance of notice provisions, a further discussion of such requirements is beyond the scope of this report. The Commission will return to the issue of notice in the context of a more comprehensive review of commercial tenancies law in Manitoba, once it has had an opportunity to review the Uniform Law Conference's *Uniform Commercial Tenancies Act*.

CHAPTER 7

CONCLUSION

Both section 17 of *The Landlord and Tenant Act* and Section 93 of *The Real Property Act* imply in every lease agreement a power on the part of the landlord to re-enter leased premises and terminate a tenancy in cases of non-payment of rent. Section 93 of *The Real Property Act* also implies in every lease agreement a landlord's right to re-enter and terminate a tenancy in cases of breach of covenant or failure to effect repairs in a timely manner.

Although these implied terms are rarely used in practice, the significant discrepancies between them affect the clarity and accessibility of the law. These discrepancies ought to be corrected. Duplication and inconsistent rules add complexity to an already difficult area of law.

In this report, the Commission has recommended the repeal of section 93 of *The Real Property Act* and amendments to section 17 of *The Landlord and Tenant Act*. The new section 17 of *The Landlord and Tenant Act* will imply the following powers in every lease agreement:

- A landlord's power to inspect leased premises and to give notice requiring a tenant to effect certain repairs;
- A landlord's power to re-enter leased premises if a tenant fails to effect required repairs within the time specified in the notice;
- A landlord's power to re-enter leased premises if rent is unpaid for a period of 15 days, or if a covenant is breached continuously for a period of 15 days.

In terms of statutory organization, the Commission has also recommended the repeal of section 92 of *The Real Property Act* and its re-location in *The Landlord and Tenant Act*. Section 92 contains an implied term requiring a lessee to pay rent and keep the leased premises in good repair. It is more properly situated in *The Landlord and Tenant Act*, with the rest of the statutory implied terms.

Recent reform initiatives in other Canadian jurisdictions highlight the need for comprehensive reform of commercial tenancies law, and the Commission will return to this topic in a future report. In the meantime, the changes recommended in this report should bring some clarity to the implied term allowing a landlord to inspect and in some cases re-enter leased premises, rendering the law more accessible to lay persons and members of the legal profession alike.

CHAPTER 8

LIST OF RECOMMENDATIONS

1. Section 93 of *The Real Property Act* should be repealed. (p. 12)

2. Section 92 of *The Real Property Act* should be repealed. (p. 12)

3. Section 17.1 should be added to *The Landlord and Tenant Act* to provide as follows:

17.1 The following covenants are implied in every lease, unless a contrary intention appears in the lease:

(a) That the lessee will pay the rent thereby reserved at the times mentioned in the lease; and

(b) That the lessee will at all times during the continuance of the lease keep, and at the termination thereof yield up, the land comprised in the lease in good and tenantable repair, accidents and damage to the buildings from fire, lightning, storm, and tempest, and reasonable wear and tear, excepted. (p. 12)

4. Section 17 of *The Landlord and Tenant Act* should be amended to provide as follows:

17. The following powers of the lessor are implied in every lease, unless a contrary intention appears in the lease:

(a) that the lessor or the lessor's agent may:

(i) enter on the leased land and view the state of repair; and

(ii) serve on the lessee, or leave at the lessee's last or usual place of residence or on the leased land, a notice in writing of any defect, requiring the lessee, within a reasonable period specified in the notice, to repair the defect to the extent that the lessee is bound to do so;

(b) that the lessor may enter on and repossess and enjoy the leased land as of the lessor's former estate where:

(i) the rent reserved, or any part of the rent reserved, is in arrears for the space of 15 days, although no formal demand for the rent has been made;

(ii) the lessee defaults in the performance of any covenant, whether express or implied, and the default continues for 15 days;

(iii) the repairs required by the notice mentioned in subclause (a)(ii)

are not completed within the period specified in the notice; or
(iv) the lessee or any other person is convicted of keeping a disorderly house, within the meaning of the Criminal Code (Canada), on the leased land or any part of the leased land. (p. 13)

This is a report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 28th day of February, 2013.

"Original Signed by"
Cameron Harvey, President

"Original Signed by"
Jacqueline Collins, Commissioner

"Original Signed by"
Michelle Gallant, Commissioner

"Original Signed by"
John C. Irvine, Commissioner

"Original Signed by"
Gerald O. Jewers, Commissioner

"Original Signed by"
Myrna Phillips, Commissioner

"Original Signed by"
Perry W. Schulman, Commissioner

COMMERCIAL TENANCIES: SECTION 17 OF *THE LANDLORD AND TENANT ACT* AND SECTION 93 OF *THE REAL PROPERTY ACT*

EXECUTIVE SUMMARY

In this report, the Commission reviews two provisions concerning a landlord's right to re-enter leased commercial premises: section 17 of *The Landlord and Tenant Act* and section 93 of *The Real Property Act*.

Re-entry is a remedy available to landlords in circumstances where the tenant has committed a serious breach of a commercial tenancy agreement. It involves re-taking possession of the premises and thereby terminating the tenancy agreement.

Both Section 17 of *The Landlord and Tenant Act* and Section 93 of *The Real Property Act* imply a landlord's right to re-enter in every commercial lease agreement. These statutory implied terms will apply unless a lease agreement specifically provides for a right of re-entry, in which case the terms of the lease agreement will govern.

There are discrepancies between section 17 of *The Landlord and Tenant Act* and Section 93 of *The Real Property Act* in respect of both the scope and timing of the remedy of re-entry. This report makes recommendations to clarify and reconcile Manitoba's legislation in this regard. The Commission recommends the enactment of a single statutory implied term allowing a landlord to re-enter leased commercial premises if rent is unpaid for a period of 15 days or if a covenant is breached continuously for a period of 15 days.

The Commission also recommends some incidental changes to the legislation, with a view to improving its clarity and accessibility.

LOCATIONS COMMERCIALES: ARTICLE 17 DE LA *LOI SUR LE LOUAGES D'IMMEUBLES* ET ARTICLE 93 DE LA *LOI SUR LES BIENS RÉELS*

RÉSUMÉ

Dans ce rapport, la Commission examine deux dispositions législatives, soit l'article 17 de la *Loi sur le louage d'immeubles* et l'article 93 de la *Loi sur les biens réels*, concernant le droit d'un locateur de reprendre possession d'un local commercial loué. La reprise de possession est un moyen de recours ouvert aux locateurs quand un locataire a gravement enfreint les modalités d'un bail commercial. Il implique la saisie des lieux loués et donc la résiliation de la convention de location.

L'article 17 de la *Loi sur le louage d'immeubles* et l'article 93 de la *Loi sur les biens réels* font toutes deux état des pouvoirs implicites du locateur pour reprendre possession d'un bien loué visé par une convention de location. Ces pouvoirs implicites s'appliqueront à moins que la convention de location ne prévoie spécifiquement un droit de reprise de possession, auquel cas les modalités de ladite convention seront suivies.

Il y a des divergences entre l'article 17 de la *Loi sur le louage d'immeubles* et l'article 93 de la *Loi sur les biens réels* quant à l'étendue du droit de reprise de possession et les délais impartis pour se prévaloir de ce droit. Le présent rapport formule des recommandations pour clarifier et faire concorder les lois du Manitoba à cet égard. La Commission recommande l'adoption d'une seule clause légale implicite permettant à un locateur de reprendre possession d'un bien commercial loué si le loyer demeure impayé dans les 15 jours de la date à laquelle il aurait dû être payé, ou si un engagement est enfreint continuellement pour une période de 15 jours.

La Commission recommande également d'autres modifications aux dispositions législatives, en vue d'améliorer leur clarté et accessibilité.